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FILED
08 FEB -7 AM 11:55
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL TORRES-ALONZO, Plaintiff, v. UNITED STATES OF AMERICA, DEFENDANT DOE DRIVER, and DOES 1 through 100, individually, Defendants.	Case No. '08 CV 0242 WQH NLS **PLAINTIFF'S COMPLAINT FOR PERSONAL INJURIES** (Federal Tort Claims Act)

Plaintiff MIGUEL TORRES-ALONZO hereby alleges as follows:

INTRODUCTION

1. Plaintiff brings this action against Defendants UNITED STATES OF AMERICA ("USA"), DOE DRIVER, and several other as of yet unknown federal agents (sued herein as DOES 1-100) for the injuries plaintiff received when his finger was broken as a result of the negligence of DOE DRIVER on or about February 18, 2006. This action arose after Defendant DOE DRIVER broke plaintiff's finger after plaintiff had been arrested by United States Border Patrol agents and was being transported to a detention facility. After breaking plaintiff's finger, Defendant DOE DRIVER and other, as of yet unknown federal agents (sued herein as DOES 1-100), failed to provide Plaintiff with timely medical treatment.

2. Plaintiff brings this action against Defendant USA under the Federal Tort Claims Act ("FTCA") based upon the torts committed against plaintiff by the employees and/or agents of Defendant USA (including, but not limited to, those of DOE DRIVER and DOES 1-100).

3. DOE DRIVER and the other as of yet unknown federal agents, sued herein as DOES 1-100, are law enforcement officers employed by Defendant USA and were acting during the course and scope of their employment with Defendant USA when they committed the acts alleged in this complaint.

PARTIES

4. At all times mentioned in this Complaint, Plaintiff MIGUEL TORRES-ALONZO, was, and now is, a citizen of the Republic of Mexico.

5. Defendant USA is a sovereign governmental entity which has been engaged in, among other things, law enforcement activities on public land owned by defendant USA. Defendant USA has waived its sovereign immunity and has consented to be sued pursuant to the FTCA, 28 United States Code ("U.S.C.") §§ 1346(b) and 2671-2680. Defendant USA is sued for the negligent and intentional torts of its employees (including, but not limited to, Defendant DOE DRIVER and DOES 1-100) as set forth in this Complaint. All said negligent and intentional torts committed by said employees of the USA were committed during the course and scope of said employees' employment with Defendant USA.

6. At all times mentioned herein, Defendant DOE DRIVER was an investigative or law enforcement officer as defined in 28 U.S.C. § 2680(h) of the United States Border Patrol, Department of Homeland Security, an agency of the United States of America. At the time DOE DRIVER injured Plaintiff, DOE DRIVER was acting in his/her official capacity as a federal law enforcement agent, and thus was acting under color of federal law.

7. At all times mentioned herein, DOES 1-100 were investigative or law enforcement officers employed by the United States. Plaintiff is informed and believes and herein alleges that said officers are employed by either the United States Border Patrol, the Department of Homeland Security, the Federal Bureau of Investigation, the United States Department of Justice, or other some other agency within the United States government. Plaintiff alleges that said federal agents, sued herein as DOES 1-100, failed to provide Plaintiff with timely medical attention for the injury he was subjected to by Defendant DOE DRIVER.

JURISDICTION

8. The jurisdiction of this Court, as to Plaintiff's claim against Defendant USA, is based upon 28 U.S.C. §§ 1346(b) and 2671-2680. Plaintiff filed an administrative claim under the FTCA for damages

against Defendant USA on July 2, 2007. Defendant USA rejected plaintiff's timely claim. Accordingly, plaintiff is entitled to file this action.

VENUE

9. The acts and occurrences that form the basis of this Complaint occurred within the Southern District of California. Jurisdiction is thus invoked by 28 U.S.C. § 1391(a)(b)(d)(e)(1)(2) and 28 U.S.C. § 1402(b).

GENERAL ALLEGATIONS

10. On or about February 18, 2006, plaintiff and approximately six other undocumented Mexican nationals were traveling through rural Imperial County approximately seventeen miles west of the city of Calexico, California, and two miles north of the international border. Plaintiff and his companions encountered Border Patrol agents and stopped. The members of the group were questioned and then arrested.

11. One of the Border Patrol Agents on the scene was Defendant DOE DRIVER. The Border Patrol agents at the scene handcuffed and arrested plaintiff and the six others, and then placed all seven individuals in the same Border Patrol vehicle. This vehicle was a "Blazer-type" sports utility vehicle which was equipped with only three seatbelts in the area where the seven men were placed. Four of them men were placed on the rear seat, while the other three were made to sit further back without seatbelts. Plaintiff was one of the individuals who did not have a seatbelt.

12. Plaintiff's hands were cuffed in front of his body. DOE DRIVER drove his/her vehicle at a rapid speed and came to an abrupt halt. Because he was unbelted, plaintiff was thrown forward and his hand was smashed into the metal mesh which separated DOE DRIVER from the detainees in the rear of the vehicle. Plaintiff's right index finger was severely damaged. DOE DRIVER and the other agents present then took plaintiff away and waited a considerable period of time before providing plaintiff with appropriate medical attention.

13. At no time did plaintiff threaten either DOE DRIVER or any other individual or give valid and lawful consent to be transported without a seatbelt. In placing plaintiff in his/her vehicle in the above-stated manner, and driving in the manner in which he/she did, DOE DRIVER acted in a fashion that was negligent and below the applicable standard of care.

14. At the time she injured Plaintiff, DOE DRIVER was dressed in his/her Border Patrol Agent's uniform, was acting in his official capacity as a federal law enforcement agent, and, accordingly, was acting under color of federal law.

15. In addition to the acts alleged above, Defendant DOE DRIVER and other federal employees, including but not limited to DOES 1-100, as well as individuals at the Imperial County Jail, the facility to which plaintiff was taken and held following his arrest, waited an unreasonable period of time before providing and securing medical attention for plaintiff. This delay exacerbated plaintiff's injuries. Moreover, the medical care provided to plaintiff while he was in custody was inadequate. The fact that plaintiff would receive inadequate medical care while incarcerated was a reasonable and foreseeable consequence of the negligence of Defendant DOE DRIVER.

16. As a proximate result of the above-stated circumstances, facts and negligent acts and omissions, plaintiff was injured and sustained the injuries and the damages herein alleged.

17. As a direct and proximate result of the conduct of defendants, and each of them, plaintiff was hurt and injured in his health, strength, and activity, sustaining injury to his body and shock and injury to his nervous system and person, all of which said injuries have caused and continue to cause plaintiff great mental, physical and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges that said injuries will result in some permanent disability to plaintiff, all to his general damage in a sum according to proof at the time of trial.

18. As a further direct and proximate result of the conduct of defendants, plaintiff will incur medical and incidental expenses in the future in an amount according to proof at the time of trial.

19. As a result of this incident, Plaintiff has suffered, and will continue to suffer, personal injury, physical, mental and emotional pain and suffering, and severe emotional distress and psychological damage.

20. As a further direct and proximate result of the conduct of defendants, and each of them, Plaintiff was prevented from attending to his usual occupation and thereby lost earnings. Plaintiff is informed and believes, and on such information and belief alleges, that he will be prevented from attending to his usual occupation for a period of time in the future and will thereby sustain further future loss of earnings, all to plaintiff's damage in a sum according to proof at the time of trial.

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21. As a further direct and proximate result of the conduct of defendants, and each of them, plaintiff's earning capacity has been diminished and/or greatly impaired, both in the past, present and future in an amount according to proof at the time of trial.

FIRST CAUSE OF ACTION

(FTCA CLAIM – AGAINST ALL DEFENDANTS)

Negligence

22. Plaintiff hereby incorporates by reference paragraphs 1 through 21 above as though set forth herein in full.

23. At all times herein mentioned, Defendant USA, was, and is a sovereign governmental entity which has been engaged in, among other things, patrolling and policing public lands owned by the United States Government within the territorial jurisdiction of the United States. Defendant USA performs these activities by and through its agencies, including the Department of Homeland Security and the United States Border Patrol. In so doing, Defendant USA, and its agents and employees, had a duty to avoid subjecting persons with whom they come into contact during the course and scope of their duties, such as plaintiff, to unreasonable risks of harm.

24. Further, at all times herein mentioned, Defendant USA, its agents and employees (including but not limited to DOE DRIVER and DOES 1-100), and each of them, owed a duty of care to plaintiff to protect him against foreseeable injurious conduct, including that of their agents and employees, and to ensure that defendant's employees in such a situation as described herein, would take adequate precautions for plaintiff's safety and protect him from negligence, unlawful, unnecessary and unreasonable force, and assault by agents and employees of Defendant USA. Defendant USA's agents and employees, including, but not limited to, DOE DRIVER and DOES 1-100, while acting within the course and scope of their agency and/or employment with Defendant USA, breached their duty of care to plaintiff by failing to abide by the standard of care and failing to act as a reasonable individual would in a similar situation. This breach of their duty of care by defendants resulted in the damages to plaintiff alleged herein.

25. As the direct and proximate result of said breach of duty of care by Defendant USA's agents and employees, and each of them (including, but not limited to, DOE DRIVER and DOES 1-100), plaintiff suffered the injuries and damages alleged herein.

26. If the Defendant USA was a private person, it would be liable to plaintiff in accordance with the laws of the state of California.

SECOND CAUSE OF ACTION

(FTCA CLAIM - AGAINST DEFENDANT USA ONLY)

Negligent Hiring, Training, Retention & Supervision

27. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 26, hereinabove, as though set forth herein in full.

28. Plaintiff alleges that Defendant USA, by and through its vested authorities (*i.e.*, its agents and employees), failed to properly and adequately train DOE DRIVER and DOES 1-100 (all of whom are agents and/or employees of Defendant USA) to properly carry out their duties of employment.

29. Plaintiff further alleges that Defendant USA, by and through its vested authorities, failed to properly and adequately supervise, discipline, control and/or manage DOE DRIVER and DOES 1-100.

30. Defendant USA, by and through its agents and employees, was responsible for the hiring, training, disciplining, suspending, managing, supervising, directing, controlling, retaining and conduct of and DOE DRIVER and DOES 1-100.

31. Defendant USA, its agents and employees, acting individually and in conspiracy with one another and with others unknown, negligently and carelessly hired, trained, disciplined, retained, supervised, managed, directed and controlled the conduct and activities of DOE DRIVER and DOES 1-100, proximately causing the injuries to plaintiff in that DOE DRIVER, DOES 1-100 and other unknown federal law enforcement agents, while in the course and scope of their employment with Defendant USA, negligently and carelessly failed to take reasonable steps to ensure that plaintiff would be safe during the period of time in which he was transported in an official government vehicle by said employees (including, but not limited to, DOE DRIVER). Said injuries were a direct result of the breach of the duty of care which Defendant USA's agents and employees owed to plaintiff.

32. If Defendant USA was a private person, it would be liable to the plaintiff in accordance with the laws of the state of California.

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PRAYER FOR DAMAGES

(Against All Defendants)

1. For general and special damages for Plaintiff's pain in body and mind, including, but not limited to, emotional distress and physical pain-and-suffering and loss of enjoyment of life in an amount in excess of $1,000,000.00;
2. For damages for the Plaintiff's past, present, future lost earnings and diminished earning capacity, in an amount in excess of $1,000,000.00;
3. For damages for the Plaintiff's past, present and future medical expenses in excess of $1,000,000.00;
4. For costs and expenses of suit incurred herein; and
5. For such other and further relief as this Court may deem just and proper.

Dated: December 3, 2007

LAW OFFICES OF GERALD SINGLETON

By: ______________________
GERALD SINGLETON
Attorney for Plaintiff Miguel Torres-Alonzo

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 147360 - BH
*** * C O P Y * ***
February 07, 2008
11:29:07

Civ Fil Non-Pris
USAO #.: 08CV0242 CIVIL FILING
Judge..: WILLIAM Q HAYES
Amount.: $350.00 CK
Check#.: PC# 985

Total-> $350.00

FROM: TORRES-ALONZO V. U.S.A
CIIVL FILING

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MIGUEL TORRES-ALONZO

(b) County of Residence of First Listed Plaintiff (Republic of Mexico)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gerald Singleton, Law Offices of Gerald Singleton, 1950 Fifth Avenue, Suite 200, San Diego, CA 92101; (619) 239-2196

DEFENDANTS

UNITED STATES OF AMERICA, DOE DRIVER, and DOES 1-100

FILED
08 FEB -7 AM 11:55
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
'08 CV 0242 WQH NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☒ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
Title 28 USC sec. 1346(b) and 2671-2680

Brief description of cause:
Plaintiff sustained injuries and damages as a result of the negligence of United States employees, agen

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 3,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 12/04/2007

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 147360 AMOUNT $350 2/7/08 BH APPLYING IFP JUDGE MAG. JUDGE